

CITY OF OAKLAND

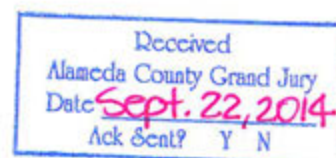


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September 19, 2014

Ms. Kelly A. McFarland
Jury Foreperson
Alameda County Grand Jury
1401 Lakeside Drive, Suite 1104
Oakland, CA 94612



Dear Ms. McFarland,

Please find attached our response to the 2013-2014 Alameda County Grand Jury Final Report, titled "Oakland Fire Department Commercial and Vegetation Inspections." Thank you for the opportunity to respond to the Grand Jury Report; we appreciate the time and effort of the members of the Grand Jury in completing their report. We value and recognize that the input of the Grand Jury and its analysis of the Commercial and Vegetation Inspections conducted by the Oakland Fire Department.

The Grand Jury reports highlight several contracting oversight and reporting concerns that the City agrees we must address and improve. The City is strongly committed to improving and strengthening the Commercial and Vegetation Inspections consistent with the Grand Jury findings and recommendations. Attached to this correspondence please find a "Memorandum Response from the Oakland Fire Department to the FY 2013-2014 Alameda County Grand Jury regarding their report titled, "Oakland Fire Department Commercial and Vegetation Inspections," which details the City's responses to the Grand Jury's Findings and Recommendations.

Please note that while the Administration and the Oakland Fire Department have already commenced to take steps to address the Grand Jury's recommendations, some recommendations will require City Council action which will delay implementation. In areas where City Council authorization is not needed, the Administration will move diligently to implement the recommendations.

Meanwhile, the Administration, the Oakland Fire Department, and Fire Administration will continue to evaluate and make necessary adjustments to assure the Fire Prevention Bureau is serving this community and meeting the needs of the City of Oakland. We appreciate the efforts of the Grand Jury and its recommendations to further the goals of an open, transparent, and accountable City of Oakland.

Should you need any additional information regarding this response, please feel free to contact Chief Teresa Deloach Reed at (510) 238-4050.

Sincerely,


Jean Quan
Mayor, City of Oakland


Arturo M. Sanchez
Interim Assistant City Administrator

Attachment (1)

- Response to Alameda County Grand Jury Report on Oakland Fire Department Commercial and Vegetation Inspections



MEMORANDUM

TO: HENRY L. GARDNER
CITY ADMINISTRATOR

FROM: Teresa Deloach Reed
Chief of Fire

SUBJECT: SEE BELOW

DATE: September 19, 2014

City Administrator
Approval

Date

SUBJECT: “Response from the Oakland Fire Department to the FY 2013-2014 Alameda County Grand Jury regarding their report titled, “Oakland Fire Department Commercial and Vegetation Inspections.”

EXECUTIVE SUMMARY:

The purpose of this information memo is to provide a response to the findings and recommendations made by the FY 2013-2014 Alameda County Grand Jury (Grand Jury) during their investigation of the Oakland Fire Department (OFD) commercial and vegetation management inspection programs, as published in the Grand Jury’s Final report issued on June 23, 2014. The Grand Jury’s Final Report included three (3) findings and (5) five recommendations. OFD agreed with two (2) findings (14-22 and 14-24) and partially with one (1) finding (14-23). OFD has implemented two (2) recommendations (14-21 and 14-24); will implement one (14-25) within twelve (12) months; will need further analysis on one recommendation (14-22) and will not implement one (1) recommendation (14-23) due to the conflict with the City’s Municipal Code. A summary of the Grand Jury’s findings and recommendations and the City’s response are in the tables below, with more complete responses in the section of this report titled “*Grand Jury Recommendations/Findings and the City’s Final Response*”:

Number	Grand Jury’s Findings	City of Oakland’s Response
14-22	A poor billing and collections practice by the City of Oakland’s commercial inspection program and vegetation management program has resulted in reducing the overall effectiveness of the City’s fire prevention programs and services.	Agree
14-23	The City of Oakland has not made public their decision outlining the use of remaining WPAD funds, leaving WPAD residents questioning the allocation of the remaining funds.	Partially Agree

14-24	The City of Oakland’s website states the commercial inspection program mandates annual inspections of all commercial facilities. This provides the public with the false impression that all commercial businesses are inspected annually. The Grand Jury learned that approximately 4,000 (out of approximately 11,000) go un-inspected each year.	Agree
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Number	Grand Jury’s Recommendation	City of Oakland’s Response
14-21	The City of Oakland must staff and equip a city department to pursue the collection of fire inspection fees	Implemented
14-22	The City of Oakland must record liens against properties that fail to pay the fire inspection fees	Require further analysis
14-23	The City of Oakland must consider declining the renewal of annual business licenses unless all city fees and fines have been paid, including fire inspection and abatement costs	Will not be implemented due to conflict with the City Municipal Code
14-24	The City of Oakland must issue a final report outlining how the unspent WPAD funds will be used	Implemented
14-25	The City of Oakland must provide accurate information to the public (on its website and in documents) about the frequency of inspections and number of commercial fire inspections completed	Not yet implemented, but will be implemented within 12 months

GENERAL BACKGROUND:

In the past 10 years, OFD has faced many challenges with respect to its staffing resources, which have had a substantial impact on the department’s ability to deliver services. In 2005, the OFD Senior Staff was reduced from three (3) Deputy Fire Chiefs to two (2) Deputy Fire Chiefs. From 2008 - 2011, the Fire Chief position was filled on a part time basis and from 2011 – 2012, the Fire Chief position was filled on an interim basis. A permanent Fire Chief was appointed in March 2012. In 2008, the Fire Prevention Bureau (FPB) lost several critical staff support positions, including an Administrative Analyst I position, Administrative Assistant II position, and a Senior Data Entry Operator position. Also in 2008, the Sworn Assistant Fire Marshal position became frozen due to necessary budget cuts. The loss of these positions in addition to the consolidation of the Deputy Fire Chief positions resulted in a noticeable impact along with capacity and supervisory challenges within the FPB. The consolidation of a Deputy Fire Chief resulted in this position being responsible for leading the FPB, Fire Communications Division,

Training Division and Support Services, which consisted of fleet management, information technology and facility repair and maintenance. Due to the expanded responsibility of the Deputy Fire Chief Position, the non-sworn Assistant Fire Marshal became tasked with managing the day-to-day operations of the FPB resulting in a span of control of 14-1 (industry standard is typically 8-1) and the direct supervision and management of programs such as Certified Unified Participating Agency (CUPA), Wildfire Prevention Assessment District (WPAD) and Vegetation Management Unit, Code Enforcement, Commercial Inspection program and Plan Checking. Citywide fiscal challenges have had a huge effect on OFD being able to utilize technology to help streamline processes. Given the City's own Information Technology Department was severely cut during this same time period, this in turn, placed the OFD in a position to become its own information technology expert resulting in the purchase of a record management and billing system that failed to meet the needs of the Department.

Since 2012, OFD has been working diligently to make the FPB cost recovering and a more efficient operation, by implementing changes such as the hiring of a designated full-time permanent Fire Marshal, the unfreezing of the sworn Assistant Fire Marshal position, permanent staffing of all supervisory and vacant positions, implementation of an automated billing system, a user-friendly record management system for inspection accountability, and documented policies and procedures.

The Department (OFD) is required by California Penal Code section 933 to respond to the Presiding Judge of the Alameda County Superior Court within 90 days of the issuance of the Report on the findings and recommendations pertaining to matters under the control of the governing body. California Penal Code, Section 933.05, contains guidelines for responses requiring the Department to state one of the following in responses to the Grand Jury's findings:

- It agrees with the finding.
- It agrees partially with the finding and provides explanation.
- It disagrees wholly with the finding and provides explanation.

In addition, for each Grand Jury recommendation, the Department is required to report one of the following actions:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future with an implementation timeframe.
- The recommendation requires further analysis, with an explanation and the scope of the parameters of analysis or study, and a timeframe for the matter to be prepared for discussion, which shall not exceed six months from the date publication of the Grand Jury Report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation.

The below section represents OFD's analysis of the Grand Jury's findings and response to the recommendations.

GRAND JURY FINDINGS / RECOMMENDATIONS AND THE CITY'S FINAL RESPONSE:

This section of the report is the City's responses to the findings and recommendations in the Grand Jury's Final Report regarding the commercial and vegetation inspections:

Finding 14-22: A poor billing and collections practice by the City of Oakland's commercial inspection program and vegetation management program has resulted in reducing the overall effectiveness of the City's fire prevention programs and services.

RESPONSE: The City agrees with this finding. Although OneStep is still a stand-alone system, staff has been working extensively with the OneStep vendor to modify the database to meet the accountability and billing needs of the FPB. After countless numbers of staff hours and collaboration with the OneStep vendor, staff is now able to automatically generate second and third billing notices. The first round of automatically generated second billings took place in July 2014.

The FPB has also worked with the City's Revenue Bureau to understand what must take place to send a delinquent bill to the Revenue Bureau to ensure timely cost recovery for outstanding fees and fines. Customers and businesses will be given 90 days to reconcile their bill. Any bill outstanding after the 90 days reconciliation period will be sent to the Revenue Bureau to start the collections process. These procedures have been developed and have been implemented effective immediately.

Approximately ten percent (10%) of the initial billings are returned undeliverable. Staff is responsible for manually researching the correct name and address of the business or building owner, before resending the invoice, then resetting the 30-day payment deadline.

Procedures have been developed to address the non-deliverable invoices. The Revenue Bureau uses an automated system for locating current addresses. In order for the Fire Prevention Bureau (FPB) to capitalize on this system, once a month, all returned billing will be submitted to the Revenue Bureau on an Excel spreadsheet template provided to the FPB by the Revenue Bureau. Although staff is required to enter information into the spreadsheet manually, utilization of this system will free up time and allow greater capacity to address the billing and invoicing of commercial and vegetation management inspections.

With these systems in place, the FPB is now more prepared to address all billing and invoicing generated by the FPB. Although this is not a cure all, the City continues to work toward acquiring a record management and billing system capable of interfacing with Point of Sale (POS) and Oracle (the City's financial system), as well as replacing a vacant Office Assistant II with an Account Clerk II to improve fiscal support.

Background

Since 2008, many actions have taken place that resulted in a poor billing and collection practice by the OFD FPB. These include a reduction in staffing, and a record management system that would not interface with the Point of Sale (POS) system (used to perform accounts receivable functions, including invoicing and payment receipting) or Oracle (the City's financial system). Once the responsibility of the then - Community Economic Development Agency (CEDA), vegetation clearance of non-compliant private property is now the responsibility of the Vegetation Management Unit in OFD.

As mentioned earlier in this response, the FPB lost several key positions in 2008, including: a sworn Assistant Fire Marshal, Administrative Analyst I and Administrative Assistant II, which had a direct impact on the effectiveness of the commercial inspection program and billing. The sworn Assistant Fire Marshal position was responsible for the management and oversight of the commercial inspection and the Code Enforcement Division. The Administrative Analyst I performed fiscal operations including accounts payable and receivable and handling of funds. The Administrative Assistant II provided a full range of professional clerical and administrative support duties needed to provide direct assistance to the Fire Marshal as well as the Assistant Fire Marshal. In addition to their standing job functions and responsibilities, the job functions and responsibilities of the Administrative Analyst I and Administrative Assistant II became additional responsibilities of the Management Assistant and the Administrative Assistant I, the largest responsibility being the data entry, billing, invoicing and collections.

In FY 2011-12, clearance of non-compliant private property became the responsibility of the vegetation management unit. \$100,000 was allocated from the City's general purpose fund to be used as seed money to fund the clearance of these properties. When the FPB was given the responsibility of clearing non-compliant private property, the Vegetation Management Unit and current staffing became responsible for the processing and issuing of contracts, billing and invoicing of services rendered. While the Vegetation Management Unit became responsible for processing contracts, billing and invoicing for these private properties, staff within this unit was cut from five (5) full time suppression district inspectors to one (1) suppression district inspector supervisor, one (1) suppression district inspector and three (3) part time suppression district inspectors. These reductions resulted in the suppression district inspector supervisor spending a majority of his time in the field managing complaints; managing the Wildfire Prevention Assessment District (WPAD); the processing, issuing and compliance monitoring of contracts issued for goat grazing, public and private land clearance and neighborhood chipping program, and the training of both firefighting personnel and part-time Fire Suppression District personnel.

This reduction of staffing within the FPB has resulted in a poor billing and collection practice and reduced revenue, thus reducing the overall effectiveness of the funding allocated for clearing non-compliant private property. The \$100,000 allocated to the Vegetation Management Unit to clear non-compliant private property was to be used as seed money initially. With an efficient billing and collection process, the reimbursed cost of clearing non-compliant private property would be returned to the vegetation management unit to use as additional funding for the clearance of the remaining non-compliant private properties. Staff is researching whether this concept is possible, and if so; will put a system in place. In 2012, 248 of properties went unabated due to a lack of funding.

The OneStep database program used by the FPB was purchased off the shelf as a record management system used to document, track and manage inspections conducted by the Fire Prevention and Fire Suppression personnel and implemented in 2010. The program presented several issues due to lack of IT Department staff support and failure on the side of the OFD to purchase a program that met the needs of the FPB. The OneStep data management software program was not intended to be used as a billing program, but the current method of manual billing was problematic, time consuming and taxing on limited staffing. For this reason, staff worked diligently with the OneStep vendor resulting in this data management program being programmed to generate initial billing invoices. Although this was helpful, second and third billing was still being handled manually when notices were sent out. All manual invoicing and billing within the FPB is managed and/or handled by the current Management Assistant and the Administrative Assistant I assigned to Fire Prevention. These positions were also responsible for the collection of delinquent invoices. As noted earlier in this report, as of July 2014, the OneStep system is now able to automatically generate second and third billing notices.

Finding 14-23: The City of Oakland has not made public their decision outlining the use of remaining WPAD funds, leaving WPAD residents questioning the allocation of the remaining funds.

RESPONSE: The City partially agrees with the finding. On January 23, 2014, the Office of the City Attorney (OCA) issued an opinion on whether the City can expend funds from the District after the District expires. The OCA opined that the City is entitled to spend the on-hand assessment revenues and the FY 2013-14 assessment revenues for authorized purposes after the Assessment District ceases to exist. This conclusion was announced at the April 29, 2014 Public Safety Committee meeting.

The Wildfire Prevention Assessment District Fund Financial Status Report for FY 2013-14, shows account of expenditures as of July 10, 2014. During the City Council Public Safety Committee meeting on April 29, 2014, the OFD presented an informational report regarding the Oakland Fire Department Vegetation 2011-2012 Inspection Audit, and spoke to the status of the Wildfire Prevention Assessment District.

The July 2014 WPAD Fund Financial Status Report estimated assessment revenue for FY 2013-14 to be \$1,656,409. The WPAD budget for FY 2013-14 has been approved by the City Council and posted on the WPAD website as part of the FY 2013-14 Annual Report. The Annual Report contains the Advisory Committee's program proposals and the associated budget for the assessment proposed to be levied and spent in FY 2013-14.

Background

The City of Oakland formed the Wildfire Prevention Assessment District (WPAD) in January 2004 to finance the costs and expenses related to fire suppression, prevention and preparedness services and programs in the Oakland hills. The WPAD provides the following services:

- Goat Grazing
- Property Owner Chipping program
- Vegetation Management Program
- Contract and Finance Management Support
- Roving Fire Patrols Program
- Support Services for Inspection Programs and
- Public Outreach

The Oakland Fire Suppression, Prevention and Preparedness District Ordinance of 2003 (Ordinance No. 12556 C.M.S.) requires all proceeds of the assessment be maintained separately from the City's General Purpose Fund. Assessment revenue can only be used for the fire prevention programs and services listed in the Ordinance and the WPAD Annual Report, which included the budget approved by the City Council annually and cannot be diverted to other uses. Each fiscal year, the City has an independent special audit conducted to ensure assessment revenues were only expended on the authorized services and programs listed above. The legislation forming the WPAD provides for the creation of a Citizens Advisory Committee, which takes responsibility for preparing a budget for Council approval and recommending proposals and priorities. When staff was interviewed by the Grand Jury on Thursday, December 5, 2013, the Wildfire Prevention Assessment District (WPAD) was scheduled to sunset January 20, 2014, per the aforementioned 2003 Ordinance.

Finding 14-24: The City of Oakland's website states the commercial inspection program mandates annual inspections of all commercial facilities. This provides the public with the false impression that all commercial businesses are inspected annually. The Grand Jury learned that approximately 4,000 (out of approximately 11,000) go un-inspected each year.

RESPONSE: The City agrees with this finding. The goal of the OFD is to inspect every non-permitted commercial business annually. These inspections are conducted along with emergency response, mandatory training, recertification training and community outreach. Due to the volume of emergency responses, some companies have a better opportunity of reaching this goal than others. In addition, due to the economic downturn, two fire companies were browned out (taken out of service) every day from July 2012 to July 2013. In July of 2013, one fire company was restored and by July of 2014, all resources were back in service. During this period, the brown-out of these two companies increased the number of emergency calls responded to by the remaining 29 engine and truck companies.

The OFD website requires an overhaul. The OFD will work with the Information Technology Department and the Communication Unit of the City Administrator's office to make sure the citizens of Oakland are able to get the correct information needed regarding the FPB.

Background

Approximately three (3) years ago, OFD integrated the commercial inspection program into the OneStep records management system. The inspections were entered based upon commercial business licenses, not the tax assessor report of commercial properties. When the commercial inspections program began, each year business owners were sent invoices and it was at this time they were made aware of the \$158.00 per hour commercial inspection fee. It was also discovered during this period that multiple business licenses were linked to the same address (e.g. hair salon) or multiple small suites within one building managed by a property manager. Staff also realized line-staff needed support with data entry into the OneStep program. In 2011, one full-time Code Enforcement Inspector was taken out of a field assignment to assist with the management of the data entry of the commercial inspection program into the OneStep program by fire suppression personnel.

In 2014, one Fire Lieutenant was removed from regular duties and placed in a 40 hour position to reconfigure the OneStep program by distributing the inspections according to the block they reside in, wash the database of duplicate inspection addresses and forms, and finally to provide training for the line staff as the Commercial Inspection program for FY 2014-15. Today, there are approximately 7000 inspections within the OneStep system. Because commercial businesses are so fluid, the numbers continue to fluctuate monthly. Line staff will continue to work diligently to ensure inspections are submitted timely, and data entry is accurate, and proper billing and invoicing takes place.

The State Fire Marshal does not mandate annual inspections of non-permitted commercial businesses, but it does give the fire code official the right to make an inspection to enforce the provisions of the fire code. The California Fire Code Section 104.3 gives OFD the right of entry by stating "Whenever it is necessary to make an inspection to enforce the provisions of this code, or whenever the fire code official has reasonable cause to believe that there exists in a building or upon any premises any conditions or violations of this code which make the building or premises unsafe, dangerous or hazardous, the fire code official shall have the authority to enter the building or premises at all reasonable times to inspect or to perform the duties imposed upon the fire code official by this code."

Section 106.2 states that "The fire code official is authorized to conduct such inspections as deemed necessary to determine the extent of compliance with the provisions of this code and to approve reports of inspections by approved agencies or individuals."

Recommendation 14-21: The City of Oakland must staff and equip a city department to pursue the collection of fire inspection fees.

RESPONSE: This recommendation has been implemented. Although OneStep is still a stand-alone system, staff has been working extensively and diligently with the OneStep vendor to modify the database to meet the accountability and billing needs of the FPB. After countless

numbers of staff hours and collaboration with the OneStep vendor over the last year, staff is now able to automatically generate second and third billing notices.

The FPB has also worked with the Revenue Bureau to understand what must take place to send a delinquent bill to the Revenue Bureau to ensure timely cost recovery for outstanding fees and fines. Customers and businesses will be given 90 days to reconcile their bill. Any bill outstanding after the 90 days reconciliation period will be sent to the Revenue Bureau to start the collections process. These procedures have been developed and will be implemented effective immediately.

Approximately ten percent (10%) of the initial billings are returned undeliverable. Staff is responsible for manually researching the correct name and address of the business or building owner, before resending the invoice, resetting the 30-day payment deadline. Procedures have been developed to address the non-deliverable invoices immediately. The City's Revenue Division uses an automated system for locating current addresses. Utilizing this system will free up time and allow greater capacity to address the billing and invoicing of commercial and vegetation management inspection.

With these systems in place, the FPB is now more prepared to address all billing and invoicing generated by the FPB. Staff has also requested to have a vacant office assistant position upgraded to an Account Clerk II to assist with billing and invoicing. The City plans to continue to work toward acquiring a record management and billing system capable of interfacing with POS and Oracle.

Recommendation 14-22: The City of Oakland must record liens against properties that fail to pay inspection fines.

RESPONSE: This recommendation requires further analysis. Non-permitted commercial inspections are often located in a facility not owned by the business owner. Based upon the rental agreement, inspection fees and fines may be the responsibility of business owner or the property owner. The OFD is looking to implement the lien process within the vegetation management inspection program where City funds were used to clear private properties that have failed to bring their property into compliance with the fire code or has outstanding fines or fees associated with the property. As such, the City is only able to secure a lien against real property if the debt owed is the responsibility of the property owner. In instances where a debt is owed by a business owner who is not the property owner and the debt has aged in excess of 120 days with proper noticing, the City will seek relief through the Courts via a judgment. OFD agrees that the lien process must be used to reimburse the City when City resources are used to clear the private property of property owners who do not comply with fire code. Staff is in the process of assessing and recommending steps and resources necessary to conduct the concurrent lien process that would be required in these situations. It is estimated that staff will complete this analysis within 3 to 6 months.

Recommendation 14-23: The City of Oakland must consider declining the renewal of annual business licenses unless all city fees and fines have been paid, including fire inspection fees and abatement costs.

RESPONSE: This recommendation will not be implemented, because it contradicts what is allowed under the Oakland Municipal Code. Section 5.04.050 of the Oakland Municipal Code states, "The taxes prescribed by the provisions of this chapter constitute a tax for revenue purposes, and are not regulatory permit fees." The business tax certificate is merely proof that a business has paid the required business tax and is allowed to operate in the City. Thus, the City cannot withhold issuance of a business license certificate due to failure to pay other city fees and fines.

Recommendation 14-24: The City of Oakland must issue a final report outlining how the unspent WPAD funds will be used.

RESPONSE: This recommendation has been implemented. As noted earlier in this response, on January 23, 2014, the OCA issued an opinion on whether the City can expend funds from the District after the District expires that concluded the City is entitled to spend the on-hand assessment revenues and the FY 2013-14 assessment revenues for authorized purposes after the Assessment District ceases to exist. This conclusion was announced at the April 29, 2014 Public Safety Committee meeting.

The engineering budget for FY 2013-14 has been approved by the City Council and posted on the WPAD website as part of the FY 2013-14 Annual Report. The Annual Report contains the Advisory Committee's program proposals and the associated budget for the assessment tax collected in FY 2013-14.

The Wildfire Prevention Assessment District Fund Financial Status Report for FY 2013-2014, which is also posted on the WPAD website, shows account of expenditures as of July 10, 2014. During the Public Safety Committee meeting, which took place on April 29, 2014, the OFD presented an informational report regarding the Oakland Fire Department Vegetation 2011-2012 Inspection Audit, and spoke to the status of the Wildfire Prevention Assessment District.

Recommendation 14-25: The City of Oakland must provide accurate information to the public (on its website and in documents) about the frequency of inspections and number of commercial fire inspection completed.

RESPONSE: This recommendation has not yet been implemented but will be implemented within 12 months.

CONCLUSION:

The FPB has been rebuilding over the last year through the addition of resources. This includes the increase of staffing of Fire Code enforcement inspectors, the addition of a designated civilian Fire Marshal position approved by the City Council (may be in place as soon as September 2014) and the unfreezing of the sworn Assistant Fire Marshal position on July 1, 2014, which had been frozen since 2008. Staff anticipates filling this position as soon as possible.

In addition, the brown-out of fire companies ceased as of July 1, 2014 and Fire Suppression daily staffing has been restored to its previous level. Staff anticipates these changes will have a significant beneficial impact on the FPB operations. Fire Administration will continue to evaluate and make necessary adjustments to assure the FPB is serving this community and meeting the needs of the City of Oakland.

For questions regarding the contents of this report, please contact Fire Chief Teresa Deloach Reed at 510-238-4050.

Respectfully submitted,



TERESA DELOACH REED
Chief of Fire
Oakland Fire Department